

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SILVERDALE PLUMBING & HEATING,  
INC. a Washington Corporation,

Plaintiff,

v.

CONSOLIDATED SUPPLY CO., an  
Oregon corporation,

Defendant/Third-Party  
Plaintiff,

v.

LASCO BATHWARE, INC., a Delaware  
corporation,

Third-Party Defendant.

CASE NO. C04-0930RSM

ORDER GRANTING LASCO  
BATHWARE, INC.'S MOTION  
FOR SUMMARY JUDGMENT  
DISMISSING CONSOLIDATED  
SUPPLY CO.'S CLAIMS

**I. INTRODUCTION**

This matter comes before the Court on Third-Party Defendant's Motion for Summary Judgment (Dkt. #25). Third-Party Defendant asks the Court to dismiss Third-Party Plaintiff's causes of actions arising out of alleged express or implied warranties made by Third-Party Plaintiff Consolidated Supply Co. ("Consolidated") to Plaintiff Silverdale Plumbing & Heating,

1 Inc. ("Silverdale"). Third-Party Defendant argues the disclaimer of warranties signed by  
2 Silverdale specifically excluded any express or implied warranties made by Consolidated and  
3 therefore all pass-through claims from Consolidated directed against Lasco must be dismissed.  
4 Third-Party Plaintiff Consolidated did not reply to this motion. Plaintiff Silverdale's reply was  
5 untimely and therefore not considered. For the reasons set forth below, the Court agrees with  
6 Third-Party Defendant, and GRANTS the motion for summary judgment.

## 7 **II. DISCUSSION**

### 8 **A. Background**

9 Plaintiff Silverdale is a plumbing contractor who, in 2001, placed an order with  
10 Consolidated for 96 Lasco ADA compliant shower units for installation at Montclair Park, a  
11 retirement facility in Poulsbo, Washington. The units were shipped directly from the  
12 manufacturer, Lasco Bathware, Inc. ("Lasco") to Montclair Park. In response to complaints  
13 from Montclair Park that the showers were not draining properly, Silverdale made repairs to  
14 correct the installation problems. In March 2004, Silverdale brought an action against  
15 Consolidated alleging that the units were defective and nonconforming goods and that they did  
16 not drain to the specifications of the units. Shortly after being served with the complaint,  
17 Consolidated gave notice to Lasco that it could come in and defend the matter. Subsequently,  
18 Defendant Consolidated brought the instant action, a third-party complaint against Lasco. In  
19 January 2005, Plaintiff Silverdale filed a cross claim against Third-Party Defendant Lasco.

### 20 **B. Summary Judgment Standard**

21 Rule 56 of the Federal Rules of Civil Procedure states that "[i]f the adverse party does  
22 not so respond, summary judgment, if appropriate shall be entered against the adverse party."  
23 Fed. R. Civ. P. 56(e). Similarly, this Court's Local Rules state that "[i]f a party fails to file  
24 papers in opposition to a motion, such failure may be considered by the court as an admission  
25 that the motion has merit." Local Rule CR 7(b)(2). Having reviewed the record in this case, the  
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1 Court finds no reason not to apply these rules. Accordingly, summary judgment shall be  
2 GRANTED in favor of Third-Party Defendant.

3 **III. CONCLUSION**

4 Having reviewed third-party defendant's motion for summary judgment (Dkt. #25), and  
5 the declarations and documentary evidence in support of the motion, and the remainder of the  
6 record, the Court hereby GRANTS Third-Party Defendant Lasco Bathware Inc.'s Motion for  
7 Summary Judgment Dismissing Third-Party Plaintiff Consolidated Supply Co.'s Claims.

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9 The Clerk shall forward a copy of this Order to all counsel of record.

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11 DATED this \_5\_ day of August, 2005.

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14 RICARDO S. MARTINEZ  
15 UNITED STATES DISTRICT JUDGE  
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